

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7742

Petition of Green Mountain Power Corporation requesting )  
a certificate of public good, pursuant to 30 V.S.A. Section )  
248, for the purchase of electricity from NextEra Energy )  
Seabrook, LLC from 2012 through 2034 )

Order entered: 9/8/2011

**PROTECTIVE ORDER RE PREFILED EVIDENCE**

**I. INTRODUCTION**

On June 6, 2011, Green Mountain Power Corporation ("GMP") filed a Motion for Confidential Treatment of Prefiled Evidence concerning portions of the prefiled testimony and one exhibit thereto of GMP witness Christopher Cole, and eight exhibits to the prefiled testimony of GMP witness Douglas Smith (collectively, the "Allegedly Confidential Testimony and Exhibits"). Specifically, GMP asserts that the redacted passages contain confidential information that is competitively sensitive and that should be maintained as confidential. GMP submitted averments to support its request for confidentiality.

On August 15, 2011, GMP submitted revised versions of three of the Allegedly Confidential Exhibits.

No party has opposed GMP's motion.

**II. DISCUSSION**

We have reviewed the motion and supporting materials, and we conclude that GMP has made a *prima facie* showing that confidential treatment is warranted for the information at issue. Therefore, we hereby grant GMP's motion for a protective order.

To promote full public understanding of the basis for its decisions, the Public Service Board ("Board") has actively taken steps to limit the amount of information subject to protective orders. We have encouraged parties to remove material from that protection to the extent

possible. Since 2001, we have required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.<sup>1</sup> Generally, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.<sup>2</sup> However, even when the motion is uncontested the Board will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal.

In determining whether to protect confidential information, we consider three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown "good cause" for invoking the Board's protection?<sup>3</sup>

GMP asserts that certain portions of the testimony of Christopher Cole, Conf. Exh. Pet.-CC-2, and Conf. Exhs. Pet.-DCS-14, -14 (Revised), -15, -16, -17, -18, -19, -20, -20 (Revised), -21, and -21 (Revised) should be kept confidential for the following reasons:

- (1) The portions of the Cole testimony and Conf. Exh. Pet.-CC-2 at issue, and Conf. Exh. Pet.-DCS-14, -14 (Revised), -20, and -20 (Revised), contain commercial terms related to the pricing structure of the power purchase agreement ("PPA") that is the subject of this proceeding, as well as uniquely negotiated contract provisions. According to GMP, public disclosure of the commercial terms related to the pricing structure and uniquely negotiated contract provisions would provide an entity seeking to sell power to, or purchase power from, GMP or NextEra Energy Seabrook, LLC ("NextEra")

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1. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545, ("*Entergy Docket*"), Order of 11/9/01 at 5-6.

2. *Id.* at 6.

3. *See, e.g., Entergy Docket*, Order of 3/29/02 at 2.

with knowledge regarding GMP's and NextEra's positions on several of the most significant factors at issue in negotiating power contracts, putting GMP and NextEra at a competitive disadvantage.

- (2) Release of the information set forth in Conf. Exhs. Pet-DCS-14, -14 (Revised), -21, and -21 (Revised) would provide an entity seeking to sell power to, or purchase power from, GMP with knowledge regarding the specific way that the PPA price would perform under future market conditions, thereby allowing such entity to have a much better understanding of the proposed PPA's pricing formula.
- (3) Release of the information in Conf. Exhs. Pet-DCS-15, -16, -17, -18, -19, -20, and -20 (Revised) would impair GMP's ability to contract with third-party vendors who provide assistance in developing power market forecasts on the condition that GMP will keep the information confidential. GMP believes that if it were to release the information, these vendors would no longer sell information to GMP, causing significant harm to GMP.

We have reviewed the motion and supporting materials, and we have applied the existing standard. We conclude that GMP has made a *prima facie* showing that confidential treatment is warranted for the Allegedly Confidential Testimony and Exhibits.

In addition, we have consistently reminded parties who seek confidential treatment for materials that they have a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public (even during the course of this proceeding), particularly testimony and exhibits. We expect the Movants to do the same here.

Finally, we note that GMP has requested that the Allegedly Confidential Testimony and Exhibits be kept under seal for the following time periods: (a) for information containing commercial terms related to the pricing structure and uniquely negotiated contract provisions, the full 23-year life of the PPA (or, if the PPA is terminated earlier, for five years after the termination date); (b) for information related to recent power market and PPA price forecasts developed internally at GMP, along with the project cost of PPA power, five years; and (c) for market intelligence reports and analysis provided to GMP by third-party consultants, three years.

At this time, we do not explicitly rule that any specific information should remain confidential for the life of the PPA, as requested by GMP. Instead, we will grant protection to all

of the Allegedly Confidential Testimony and Exhibits for the period ending three years after the the date of the PPA, i.e., the protection shall end as of May 24, 2014. Prior to the end of the three-year period, GMP may seek an extension for some or all of the redacted information if it can demonstrate that continued protection is warranted for the specific information for which the extension is sought.

### **III. ORDER**

Therefore, IT IS HEREBY ORDERED that the Allegedly Confidential Testimony and Exhibits submitted by GMP on June 6 and August 15, 2011, shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At any hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of July 15, 2011, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with

the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

5. The protections established in today's Order shall expire as of May 24, 2014, unless extended by further order of the Board.

Dated at Montpelier, Vermont, this 8<sup>th</sup> day of September, 2011.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: September 8, 2011

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*